

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application	)	Application No. P-0006
of Aquila, Inc., Omaha, Ne-	)	
braska, seeking resolution of a	)	AQUILA'S MOTION TO COMPEL
dispute under Nebraska Revised	)	DENIED; M.U.D.'s MOTION FOR
Statute section 57-1306.	)	PROTECTIVE ORDER GRANTED
	)	
	)	Entered: August 19, 2003

BY THE COMMISSION:

1. On August 5, 2003, Aquila, Inc. ("Aquila") filed a Motion with the Commission for an Order compelling the Metropolitan Utilities District ("M.U.D.") to produce M.U.D. Board of Directors member Mark Doyle for deposition, or in the alternative, for the issuance of a subpoena compelling Mark Doyle to appear for deposition.

2. On August 6, 2003, M.U.D. filed a Motion for a Protective Order preventing Aquila from deposing Mark Doyle or any other member of the M.U.D. Board of Directors.

3. In support of its Motion, Aquila asserts that Mr. Doyle stated at a Board meeting that he believes the town border station at 174th and Fairview Road is in the public interest. Aquila maintains that it is entitled to depose Mr. Doyle to determine the facts that the Board relied upon in approving expenditures for condemnation of the easement, the main extensions to reach the town border station, and construction of the town border station.

4. In support of its Motion, M.U.D. alleges that the decision-making process of a public official or the information that an individual Board member had before making a decision is irrelevant to the final Board decision. M.U.D. further asserts that such deposition will not lead to relevant information, is burdensome and constitutes harassment.

5. The Commission finds that the information that an individual Board member considered in making a decision is not an appropriate subject of discovery for a proceeding pursuant to Neb. Rev. Stat. § 57-1306. Aquila may conduct discovery to determine the facts surrounding the M.U.D. Board's consideration of the five criteria for determining whether an extension is in the public interest pursuant to Neb. Rev. Stat. § 57-1303; but such discovery should not include deposing individual board members. Deposition of individual Board members does not appear to be reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Commission finds that it should deny the Motion of Aquila, and grant M.U.D.'s motion for

a Protective Order prohibiting Aquila from deposing any member of the M.U.D. Board of Directors.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Aquila's Motion to Compel Production of Witness or Request for Subpoena is denied.

IT IS FURTHER ORDERED that M.U.D.'s Motion for Protective Order is granted.

MADE AND ENTERED at Lincoln, Nebraska this 19th day of August, 2003.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director